

DEPARTMENT OF STATE REVENUE

04-20080394P.LOF

Letter of Findings Number: 08-0394P
Use Tax
For the Tax Years 2004-2006

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tax Administration–Penalty.**

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana taxpayer. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed sales and use tax and assessed a negligence penalty for the tax years 2004, 2005, and 2006. Taxpayer requests abatement of the penalties.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and Department records relating to Taxpayer.

I. Tax Administration–Penalty.**DISCUSSION**

Taxpayer protests the imposition of the penalties. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in pertinent part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has argued for a penalty waiver asserting a variety of objections including a history of timely tax payments, always striving to comply with the law, and taking no actions reflecting willful negligence. However, a review of Taxpayer's payment history and compliance record shows that Taxpayer filed late returns and untimely paid the tax due several times. Moreover, the Department finds that Taxpayer did not act with reasonable care and was inattentive to its tax duties. Inattention constitutes negligence and negligence is subject to penalty. Accordingly, Taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

FINDING

Taxpayer's penalty protest is denied.

Posted: 10/29/2008 by Legislative Services Agency
An [html](#) version of this document.